

Special Board of Adjustment No. 986

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Parties to the Dispute

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
DIVISION – IBT RAIL CONFERENCE

V.

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) –  
NORTHEAST CORRIDOR

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Claimant: Jon Pruna  
Award No. 255

**Organization's Statement of Claim**

The Brotherhood of Maintenance of Way Employees ("BMWE" or the "Organization") appealed the discipline of dismissal assessed on Mid-Atlantic Division B&B Mechanic Jon Pruna (the "Claimant") on charges that were set forth in the Carrier's Notice of Investigation, dated September 21, 2005. The Organization claims that the Claimant was unjustly dismissed from his employment with the National Railroad Passenger Corporation ("Amtrak" or the "Carrier"). As a remedy, the Union asked for the Claimant to be made whole for all wages, benefits, and seniority lost from the time of his dismissal to his reinstatement, and that the discipline be expunged from his record.

**Background of the Case**

The Claimant was hired by Carrier on August 1, 1994 as a B & B Mechanic.

On August 23 and 31, 2005 and on September 13 and 15, 2005, Claimant was absent from work. A Notice of Investigation was served upon Claimant on September 28, 2005, which charged the Grievant with violating Amtrak's Standards of Excellence and its National Attendance Policy for excessive absence. Claimant was found guilty of the charges. Carrier dismissed Claimant on November 16, 2005 based upon his prior disciplinary record for excessive absenteeism. All appeals on the property were unsuccessful and the parties agreed to bring the case to this Board for final adjudication.

#### **Opinion of the Board**

This Board derives its authority from the provisions of the Railway labor Act, as amended, together with the terms and conditions of the Agreement by and between the BMW and Carrier.

After hearing upon the whole record and all the evidence, as developed on the property, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the parties were given due notice of the hearing hereon. The Claimant, Jon Pruna, was present at the Board's hearing, was afforded an opportunity to make a statement on his behalf and was represented by the Organization.

The Carrier contended that its actions in this case were justified and supported by substantial evidence. The Carrier cited the Claimant's payroll records indicating his absences, as well as the Claimant's admission that he was absent from work on the dates in question, as proving that the these absences were unauthorized.

Carrier contended that while Claimant may have been ill, he did not take the necessary steps to have the absences approved. It argued that that Claimant had many resources available to him, namely, Carrier's Family and Medical Leave Policy (FMLA) to deal with his absences from work. Contrary to Claimant's contention during the appeal process, Carrier cited Claimant's prior use of FMLA leave and prior counseling as evidence that Claimant knew of the policy and, therefore, had no excuse for his excessive absenteeism.

Accordingly, Carrier argued that Carrier's attendance policy clearly provides that being absent three (3) or more times within 30 days is a violation of the policy. Carrier further argued that there were no attendant circumstances to justify Claimant's actions. Carrier cited the prior disciplinary record as evidence that Claimant had knowledge of the policy and received progressive discipline prior to being terminated on November 16, 2005. Accordingly, Carrier argued that the dismissal of Claimant was not arbitrary or capricious so as to constitute an abuse of the Carrier's discretion.

The Organization argued that Claimant proved he was ill on the dates in question, and, therefore the absences must be excused. They contend that the Notice of Investigation provided that the purpose of the investigation was to determine his responsibility under the policy. The Claimant provided proof of his illness on the dates cited by Carrier and the Claimant's supervisor had knowledge of Claimant's illness. Thus, the Organization argued the absences were not voluntary and do not violate the attendance policy.

Upon a review of the entire record, the Board finds that the Carrier's determination herein was appropriate. The evidence established that the Claimant was guilty of excessive absenteeism. Claimant was absent more than three times within a thirty-day period, in violation of the Carrier's National Attendance Policy. It is well established that Carrier has the right to maintain its standards of conduct and establish its procedures to implement them. The Carrier's National Attendance Policy established the standards of attendance expected of its employees. Clearly the Carrier has a right to expect its employees to come to work and perform the duties for which they were hired. When employees are absent from work not only do they disrupt the operational component of the work place but they also place an unfair burden on their fellow employees. In the instant matter the Claimant had an obligation to follow the precepts of the Carrier's attendance policy, including taking measures to have his absences approved and the record demonstrated that he failed to do so. That notwithstanding, the record strongly suggested that there were extenuating

circumstances attendant to the Claimant's absences. Based on the specific circumstances as argued by the Organization, the Board finds the penalty of dismissal to be unreasonable and has modified the penalty.

Finally, the Claimant should be disabused of any belief that similar future conduct will be excused. The Claimant has a responsibility to come to work when scheduled and perform the duties for which he was hired. Should his actions run afoul of the requirements of the Carrier's attendance policy in the future; his employment with the Carrier will come to an end.

**Award**

The claim is partially sustained. The record, taken in its entirety, established that the grievant is guilty as charged. The discipline of dismissal is modified to a suspension for time served. The Carrier had been directed in the Board's Interim Award, dated July 27, 2006, to restore the Claimant to service. The Claimant's restoration to service was without back pay. All time he was held out of service shall be considered a disciplinary suspension.




Gayle A. Gavin, Chair & Neutral Member

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Jed Dodd, Organization Member

Dated: September 18, 2006

  
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Rick Palmer, Carrier Member

Dated: 9/18/06